

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ZF LEMFORDER CORPORATION
Employer

and

CASE 7-RC-22084

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, REGION 1, AFL-CIO, (UAW)^{1/}
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding^{2/}, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{3/}
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{4/}
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act^{5/}

All full-time and regular part-time production and maintenance employees, including machine operators/assemblers, shipping and receiving employees, janitors, material handlers, quality auditors, and CMM lab coordinator employed by the Employer at its facility located at 3300 John Conley Drive, Lapeer, Michigan; but excluding all office clerical employees, professional employees, technical employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote

are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, REGION 1, AFL-CIO (UAW)**

because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

LIST OF VOTERS*

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or **before October 22, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **OCTOBER 29, 2001**.



Dated October 15, 2001
at Detroit, Michigan

/s/ William C. Schaub, Jr.
Regional Director, Region Seven

**Section 103.20 of the Board's Rules concerns the posting of election notices.
Your attention is directed to the attached copy of that Section.**

*If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

1/ The name of the Petitioner appears as corrected at the hearing.

2/ The Petitioner filed a brief which was carefully considered.

3/ On the second day of hearing, the Petitioner filed a motion to exclude testimony and evidence adduced by the Employer in support of its position that certain classifications shared a community of interest with the petitioned-for production and maintenance unit and must be included. The basis of the motion was that the Employer had refused to produce a key witness, Human Resource Manager Karen Rosso, and certain documents and material subpoenaed by the Petitioner a week before the opening of the hearing. The Employer had filed a petition to revoke the subpoena contending that as to several items, the subpoena was overly broad, unduly burdensome, failed to describe with sufficient particularity the evidence requested, and/or sought irrelevant material. The petition was referred to the hearing officer for disposition.

The hearing officer deferred ruling on the petition, over the objection of the Petitioner, until the Employer had the opportunity to present testimony and evidence on at least some of the disputed classifications. The Petitioner contended that its cross-examination of the witnesses was hampered by the Employer's failure to produce Rosso, either pursuant to the subpoena or as a witness, and to produce the subpoenaed material. The Employer did produce some documents and material in response to the subpoena, including job descriptions, benefit plan summaries, a diagram of the physical layout of the facility, documents describing the supervisory/managerial structure, safety rules, standards of employee conduct, personnel manuals, and blank evaluation and disciplinary forms.

On the second day of hearing, after testimony from the Employer's director of sales on tangential community of interest factors, and testimony from a process engineer on 1 of 11 classifications in dispute, the hearing officer denied the petition to revoke and ordered the Employer to turn over documents covered by the subpoena that had not already been provided and to produce Rosso to testify concerning those documents. The Employer indicated that it may produce certain other documents and material the following week when the hearing resumed for at least a third day, including names, job classifications, pay ranges, pay dates and job codes of employees in the petitioned-for unit and those employees sought to be included by the Employer. However, the Employer steadfastly refused to produce, inter alia, payroll records, specific rates of pay, bonuses, profit sharing, weekly hours worked, lunch and break times, compensation plans, personnel files, disciplinary actions, evaluations, sick leave and vacation requests, time cards, work schedules, or documents showing transfers for any of these employees. The Employer also refused to produce Rosso pursuant to the subpoena and contended it would call Rosso as its own witness when it deemed her testimony appropriate.

Based on the foregoing, the hearing officer correctly closed the hearing and foreclosed the Employer from presenting further evidence on the classifications it professed should be included in the petitioned-for unit. Despite the hearing officer's admonishments to the Employer throughout the hearing that it should produce testimony from a senior managerial official, such as the plant manager or the human resource manager who could most effectively and efficiently provide evidence regarding the 11 disputed classifications, the Employer failed to do so after two days of hearing. Having refused to comply with the hearing officer's ruling to produce subpoenaed material that was clearly relevant and highly probative of the unit issues asserted by the Employer, or to immediately produce Human Resource Manager Rosso, the hearing officer was correct in concluding the most expeditious and efficient method of resolving the unit issues was to allow those persons to vote subject to challenge in an election in the stipulated production and maintenance unit.

After the close of the hearing, the Employer filed a special appeal with the undersigned to the hearing officer's ruling to close the record, and a motion to reopen the record. There is no affidavit of service or other indication that either of these documents was served on the Petitioner, which would make them defective under Section 102.65 of the Board's Rules and Regulations. However, even aside from any procedural defects, the appeal and motion contain no new evidence or argument that was not considered by the hearing officer or the undersigned, or that is relevant to the undersigned's decision to direct an election in the stipulated unit. Consequently, the special appeal and motion to reopen are denied.

4/ The Employer is engaged in the manufacture of automotive and related products.

5/ The stipulated unit encompasses approximately 50 employees. In addition, approximately 17 employees in the following 11 classifications may vote subject to challenge: production assistant, tool crib attendant, production technician, production scheduler, VAVE technicians, document control coordinator, IT administrator, QC coordinator, health and safety administrator, office assistant, and truck driver.

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